

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PRISCILLA FYNN-JACKSON, an  
individual,

Plaintiff,

v.

ALLSTATE FIRE & CASUALTY  
INSURANCE COMPANY, a foreign  
corporation,

Defendant.

CASE NO. 3:24-cv-05667-TL

ORDER ON STIPULATION

This matter comes before the Court on the Parties’ “Stipulation and Order on CR 35 Examination of Plaintiff.” Dkt. No. 16. As the Stipulation has been submitted with a proposed order, the Court construes the submission as a motion. *See id.* at 5–6; *see also* Fed. R. Civ. P. 7(b)(1). For the reasons explained below, the Court DENIES the motion.

Under Federal Rule of Civil Procedure 35(a)(1), the Court “may order a party whose mental or physical condition . . . is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner.” But “an order for the physical or mental

1 examination of a party is not granted as of right.” *Great West Life Assur. Co. v. Levithan*, 153  
2 F.R.D. 74, 76 (E.D. Pa. 1994). Such an order “may be made only on motion for good cause and  
3 on notice to all parties to be examined.” Fed. R. Civ. P. 35(a)(2). By the express terms of Rule  
4 35(a), two requirements must be satisfied before a court orders a party to undergo a medical  
5 examination: (1) a party’s physical (or psychological) condition must be “in controversy”; and  
6 (2) the movant must demonstrate “good cause” for the examination. *Schlagenhauf v. Holder*, 379  
7 U.S. 104, 117 (1964); *Turner v. Imperial Stores*, 161 F.R.D. 89, 91–92 (S.D. Cal. 1995). The “in  
8 controversy” and “good cause” requirements “are not met by mere conclusory allegations of the  
9 pleadings—nor by mere relevance to the case—but require an affirmative showing by the  
10 movant that each condition to which the examination is sought is really and genuinely in  
11 controversy and that good cause exists for ordering each particular examination.” *Schlagenhauf*,  
12 379 U.S. at 118.

13 Here, the Stipulation submitted by the Parties does not adequately address either  
14 requirement. *See generally* Dkt. No. 16. Therefore, under Rule 35 and *Schlagenhauf*, the Court  
15 has no basis for ordering Plaintiff’s examination.


16 In general, a plaintiff’s “[a]sserting a mental or physical injury in support of a claim  
17 ‘provides the defendant with good cause for an examination to determine the existence and  
18 extent of such asserted injury.’” *Spaulding v. State Farm Mut. Auto. Ins. Co.*, No. C14-307, 2015  
19 WL 11117848 (E.D. Wash. June 29, 2015) (quoting *Schlagenhauf*, 379 U.S. at 118). And the  
20 fact that the Parties have stipulated to Plaintiff’s examination here “may reflect [Plaintiff’s]  
21 concession that her physical condition is at issue.” *Johnson v. State Farm Mut. Auto. Ins. Co.*,  
22 No. C20-5208, 2021 WL 1795727, at \*2 (W.D. Wash. Mar. 10, 2021). But the Parties’  
23 Stipulation, as filed, only implicitly connects the proposed examination to the instant litigation,  
24

1 and it is silent as to what specific subjects the examination will inquire into. Consequently, the  
2 Court cannot conclude that the movant(s) have met their burden here under Rule 35.

3 The Court notes two additional deficiencies in the Stipulation. First, the Court has been  
4 requested to order that Plaintiff be examined under Washington Superior Court Civil Rule 35  
5 (“CR 35”). Dkt. No. 16 ¶ 1. This case, of course, is a federal civil action; it is duly governed by  
6 the Federal Rules of Civil Procedure, not the rules of state court.<sup>1</sup> Second, the Court notes an  
7 ambiguity in Paragraph 4, which states that “Dr. Coor shall conduct a neurological examination  
8 based upon general practices and standards in the profession that will not include any invasive  
9 testing, including, but not limited to, x-ray, CT scan or MRI testing.” *Id.* ¶ 4. As presently  
10 written, the Court cannot determine whether “x-ray, CT scan or MRI testing” are contemplated  
11 as “invasive testing”; or whether these diagnostics are instead included within the stipulated  
12 ambit of “a neurological examination based upon general practices and standards in the  
13 profession.”

14 Therefore, the Court DENIES the motion, with leave to re-file.

15  
16 Dated this 30th day of December 2024.

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18   
19 Tana Lin  
United States District Judge

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23 <sup>1</sup> In any event, the Stipulation would be deficient even if CR 35 were applicable here. Federal Rule of Civil  
24 Procedure 35 and Washington CR 35 are substantially similar, and Washington courts have adopted the  
*Schlagenhauf* standard with respect to the “in controversy” and “good cause” requirements. *See Matter of Welfare of*  
*Green*, 14 Wn. App. 939, 942–43, 546 P.2d 1230 (1976).